No. 93-1896

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

DARRYL J. WOODS,

Petitioner,

—against—

JOSEPH CANDELA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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Introduction

Respondent New York State Trooper Joseph Candela respectfully submits this brief in opposition to the petition for a writ of certiorari. The petition should be denied because it does not raise an important federal question of broad significance which should be settled by this Court.

Statement of the Case

This case has its origin in a search and seizure of petitioner's car which respondent conducted on September 25, 1989. (3A-4A).[1] The search led to petitioner's arrest and indictment. (4A). After an unsuccessful motion to suppress both the evidence seized and statements made to the police, petitioner proceeded to trial and was convicted. *Id.* The evidence seized was introduced during the trial. *Id.*

On January 19, 1993, the judgment of conviction was reversed and the indictment dismissed. *People v. Woods*, 189 A.D.2d 838, 592 N.Y.S.2d 748 (2d Dep't 1993). The Appellate Division held that the search of petitioner's car was unlawful and that statements given by him to the police were involuntary. *Id.* at 841-43, 592 N.Y.S.2d at 750-52.

On May 6, 1993, more than three years after the events which gave rise to it, petitioner filed a complaint in the United States District Court for the Southern District of New York pursuant to 42 U.S.C. § 1983. (4A). He alleged, *inter alia*, that respondent had violated his rights under the Fourth and Fifth Amendments to the Constitution. (4A-5A). On June 25, 1993, the district court (Goettel, J.) granted respondent's motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) on the ground that petitioner's claims were barred by the applicable three year statute of limitations and did not fall within any applicable tolling rules. (10A-25A).

The Court of Appeals for the Second Circuit affirmed. (1A-9A). The court noted, preliminarily, that this action is governed by New York's three year statute of limitations (5A), and held that, for purposes of applying the statute, petitioner's claims accrued on September 25, 1989, the day on which all of respondent's actions with respect to petitioner took place and when petitioner first knew of those actions. (5A-6A). The

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[1] Page references to the Petition and Appendix are shown by "( )" and "(A").

court rejected petitioner's contention that his claims did not accrue until his conviction was overturned, relying on its earlier decision in *Mack v. Varelas*, 835 F.2d 995 (2d Cir. 1987), in which it held that the district court should stay, rather than dismiss, a timely filed section 1983 action which could be affected by pending state court proceedings. (6A-8A).

Noting that New York law governs the tolling of the statute of limitations, the court of appeals then held that there was no provision in such law for tolling the statute of limitations on the facts of this case. (8A). In addition, the court concluded that there was no reason to displace state law because the policies of deterrence and compensation which underlie section 1983 would not be "significantly affected" by application of New York's tolling rules. (8A-9A).

REASONS FOR DENYING THE WRIT

Petitioner seeks certiorari to review the decision of the court of appeals insofar as it held that, where a plaintiff's section 1983 cause of action has accrued, but state court criminal proceedings are pending with respect to a factual and legal issue common to both proceedings, the statute of limitations is not tolled and the plaintiff is required to commence his section 1983 action within the appropriate limitation period. Petitioner contends that this decision places him and other criminal defendants in the untenable position of having to initiate a civil rights action while subject to collateral estoppel, and does not serve the purposes of 42 U.S.C. § 1983. (4-6). Accordingly, petitioner argues that the statute of limitations should be tolled in such circumstances. This argument does not present an issue which warrants review by this Court.

Tolling of the statute of limitations is a question of state law. *Board of Regents v. Tomanio*, 446 U.S. 478, 483-86 (1980); *see also Hardin v. Straub*, 490 U.S. 536, 539 (1989). Although New York law tolls statutes of limitations in a num-

ber of ways, it does not do so in any way applicable to petitioner. Specifically, New York law does not provide a toll for the period during which criminal proceedings against the plaintiff are ongoing, *see Singleton v. City of New York*, 632 F.2d 185, 191 (2d Cir. 1980), *cert. denied*, 450 U.S. 920 (1981), or the plaintiff is incarcerated (25A). In recognition of this fact, petitioner argues that the statute of limitations should be judicially or equitably tolled as a matter of federal law to permit plaintiffs to institute their actions after a final determination of their criminal proceedings where the precise issues to be raised in the civil action will necessarily be determined in the criminal proceeding. (6).

With the exception of the Court of Appeals for the Seventh Circuit, this argument has been rejected by every court of appeals which has considered it. *Kyricopoulos v. Town of Orleans*, 967 F.2d 14, 15-16 n.1 (1st Cir. 1992); *Jewell v. County of Nassau*, 917 F.2d 738 (2d Cir. 1990) (*per curiam*); *Mack*, 835 F.2d 995; *Singleton*, 632 F.2d at 193; *Richardson v. Fleming*, 651 F.2d 366, 373 (5th Cir. 1981); *Lown v. Brimeyer*, 956 F.2d 780 (8th Cir.), *cert. denied*, ___ U.S. ___, 113 S. Ct. 176 (1992); *Offet v. Solem*, 823 F.2d 1256, 1258 n.2 (8th Cir. 1987); *Young v. Kenny*, 907 F.2d 874, 878 (9th Cir. 1990), *cert. denied*, 498 U.S. 1126 (1991). For example, in *Jewell*, the court held that "[w]here a plaintiff wishes or is required to pursue his claims in succession, rather than concurrently, in the absence of the parties' agreement made to waive the limitary period before it had expired, *a judicial stay of the pending suit*, rather than dismissal, albeit expressed to be without prejudice, *is the only means by which the bar of limitations may be avoided*." 917 F.2d at 740-41 (emphasis added).

Although these decisions are not direct authority for the dismissal of petitioner's case since all concerned the handling of timely filed actions, their logic is clear, *i.e.*, a plaintiff whose criminal proceedings remain ongoing must commence his civil rights action within the usual statutory period and

then have the federal action stayed pending completion of the criminal proceedings, rather than waiting for the completion of the criminal proceedings.

The only court of appeals decision which appears to support petitioner is *Heck v. Humphrey*, 997 F.2d 355 (7th Cir. 1993), *aff'd on other grounds*, ___ U.S. ___, 114 S. Ct. 2364, 62 U.S.L.W. 4594 (June 24, 1994) (No. 93-6188). Although this Court did not reach this issue in affirming the decision of the Seventh Circuit in *Heck*, 62 U.S.L.W. at 4597, it did note that this aspect of the Seventh Circuit's decision was contrary to the holding in *Tomanio* that state tolling provisions apply to section 1983 actions, and that the court of appeals had distinguished *Tomanio* "on the ground that petitioner's claim was 'in part one for habeas corpus.' " *Heck*, 62 U.S.L.W. at 4597 (citation omitted). The distinction relied on by the Seventh Circuit does not apply in this case since petitioner's claim would not necessarily require that his conviction be invalidated.[2]

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[2] The decision in *Heck v. Humphrey*, ___ U.S. ___, 114 S. Ct. 2364, 62 U.S.L.W. 4594 (June 24, 1994) (No. 93-6188), does not affect the underlying decision of the court below that petitioner's cause of action accrued at the time of the search. In *Heck*, 62 U.S.L.W. at 4597, the Court held that there is no cause of action for damages under section 1983 in an action in which a judgment for the plaintiff "would necessarily imply the invalidity" of the plaintiff's conviction unless and until plaintiff can show that the conviction has been invalidated. In so holding, the Court noted that no statute of limitations problem was presented while the plaintiff was attempting to invalidate the conviction because "the § 1983 claim has not yet arisen." *Id.*

However, the Court also concluded that where "the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit." *Heck*, 62 U.S.L.W. at 4597 (emphasis in original) (footnotes omitted). The Court gave as an example "a suit for damages attributable to an allegedly unreasonable search. . ." and stated that "[b]ecause of doctrines like independent source and inevitable discovery, . . . , and especially harmless error, . . . , such a § 1983 action, even if successful, would not

Petitioner also claims that, in this case, as in *Triplett v. Azordegan*, 478 F. Supp. 872 (N.D. Iowa 1977), collateral estoppel considerations counsel against requiring recourse to the federal court within the limitation period. Petitioner's reliance on *Triplett* is misplaced. Beyond the fact that *Triplett* is an isolated decision which apparently has never been followed by any other court, and may very well have turned on its egregious facts, *Triplett*'s holding was rejected by the court of appeals having authority over that district court. *Offet*, 823 F.2d at 1258 n.2. Moreover, as the court below correctly concluded in rejecting this argument, petitioner's "fear of the preclusive effect of the state trial court decision is unfounded." (8A). Thus, pursuant to the Second Circuit's decision in *Mack v. Varelas*, if petitioner had filed a timely action, it could not have been dismissed during the pendency of the state appeal.

Finally, petitioner contends that the deterrence and compensation policies which underlie section 1983 require that the statute of limitations be tolled in circumstances like those which exist in this case. (4). However, petitioner's theory does not advance the federal policies upon which section 1983 focuses. Extending the period within which an action can be commenced will neither deter allegedly wrongful conduct nor increase the compensation already available for such alleged wrongs. As the court of appeals recognized (8A-9A) (citation omitted),

> "neither deterrence nor compensation is 'significantly affected by this rule of limitations since plaintiffs can still readily enforce their claims, thereby recovering compensation and fostering deterrence, simply by com-

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necessarily imply that the plaintiff's conviction was unlawful." *Id.* at 4597 n.7 (emphasis in original) (citations omitted).

Petitioner's action, alleging violation of "his Fourth Amendment right to be free from unreasonable searches and seizures without probable cause and his Fifth Amendment right to remain silent," (3), falls directly within footnote 7's exception.

> mencing their actions within three years.' . . . The . . . requirement that federal courts stay § 1983 actions until the completion of state court proceedings protects plaintiffs by allowing them to commence their actions without fearing that the lower state court decision will bar recovery; at the same time, the requirement that plaintiffs file within three years protects defendants by putting them on notice of the claim and allowing them to preserve evidence for their defense."

Conclusion

For the reasons set forth herein, the petition for a writ of certiorari should be denied.

Dated: New York, New York
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Respectfully submitted,

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